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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 001853

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [OSCE](#) [TU](#)
SUBJECT: TURKEY: CONSTITUTIONAL COURT FLEXES MUSCLE IN
DETAILED HEADSCARF VERDICT

REF: A. ANKARA 1051
[1](#)B. ANKARA 1451

Classified By: POL Counselor Daniel O'Grady, reasons 1.4 (b,d)

[1](#)1. (C) Summary and comment: Turkey's Constitution Court October 22 issued its "detailed verdict" fleshing out its June 5 annulment of constitutional amendments designed to lift the headscarf ban at Turkish universities. The Court ruled that the proposed amendments were an attempt to manipulate religion for political goals; violated the "immutable" principle of secularism; and could be used to pressure those holding differing political views and beliefs. In dissent, two appointees of President Ozal, including Court President Hasim Kilic, argued the Court had gone beyond its legal mandate to review only the procedural aspect of the amendments. The ruling Justice and Development Party (AKP), joined by some legal scholars and analysts, lambasted the Court for "usurping" Parliament's legislative power. Main opposition Republican People's Party (CHP) and other AKP critics welcomed the ruling as a warning to AKP against pursuing its own single-minded political agenda without regard for constitutional limits and the rights of others. Several women's rights groups believe AKP's "clumsy" strategy created unnecessary societal tension that quashed chances of ending the ban and passing necessary constitutional reform in the coming years. The Court's decision revived a debate on the appropriate scope of parliamentary and judicial power and demonstrates continuing political tension in Turkey that does not bode well for renewed EU-related reforms in the near-term. End summary and comment.

Constitutional Court Issues Detailed Verdict

[1](#)2. (U) Turkey's Constitutional Court October 22 issued a 20-page written opinion explaining its June 5 annulment of two constitutional amendments designed to lift the headscarf ban at universities (ref A). The Court wrote that the proposed amendments to Constitution Articles 10 and 42 were an attempt to manipulate religion for political goals and amounted to a violation of the "immutable" principle of secularism. According to the Court, the amendments, even if designed to grant freedom to those who wear the headscarf, could be used to put pressure on people with different life styles, political views, and beliefs. The Court stressed that the Constitution does not allow use of religion, religious feelings or sacred ideas to be exploited to solve societal problems. The Court also emphasized that a

numerical majority in Parliament cannot be used to pass legally invalid regulations; respect for constitutional values is vital for the validity of legislative actions.

¶3. (U) Constitutional Court President Hasim Kilic and Justice Sacit Adali objected to the ruling. In conversations with reporters, Kilic argued that the clothing restrictions in universities contradict academic freedom, stating, "universities are not army barracks." Kilic said the majority's opinion was based on fear instead of sound legal principles. In his view, the Court exceeded the scope of its authority by ruling on substance of a constitutional amendment. Adali agreed with Kilic, calling the ruling an "expression of mistrust of Parliament."

Verdict Engenders Strong Reactions

¶4. (C) Justice Minister Mehmet Ali Sahin told reporters that verdict raised the question of whether Parliament retains the power to amend the Constitution. AKP whip and constitutional law expert Bekir Bozdogan said the Court had imposed new red lines on Parliament's legislative authority. He believes that following the ruling, "there is no possibility to make a change in the Constitution." AKP Diyarbakir MP Ihsan Arslan told us the detailed verdict had, "shaken the separation of powers system." By ignoring Constitutional Article 148, he said, the judiciary "usurped the authority of the legislature" and a handful of judges had "castrated Parliament." Arslan believes that even with a large majority

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in Parliament, AKP not be able to overcome judicial opposition to any important EU-related reforms.

¶5. (U) Far-right Nationalist Action Party (MHP) whip Mehmet Sandir told reporters the decision will create uneasiness in the nation's conscious and cause tension in society. In his view, "Secularism should also guarantee the freedom of religion and faith of our citizens." CHP welcomed the reasoning as an important warning for AKP. CHP whip Hakki Suha Okay told reporters he was satisfied to see the Court declare that in democratic countries a constitution determines legislative limits. In his view, "AKP has no right to change the Turkish Republic's method of management as it likes."

¶6. (U) Several legal scholars argued that the Court exceeded its authority. Bahcesehir University Professor Serap Yazici said the Court had issued a "political ruling" that strayed beyond its obligation to determine only whether there was a procedural violation in passing the amendments. Countering that view, Yeditepe University constitutional law expert Sultan Uzerturk said the Court should be able to put forward "defense mechanisms" against attempts to change unalterable articles in the Constitution. Uzerturk said European countries such as Germany give their Constitutional Courts authority to invalidate constitutional amendments if they are contrary to overarching legal principles.

¶7. (U) Mainstream "Hurriyet" highlighted that the Court declared that wearing a religious symbol could become a tool used to pressure people with different political or religious views. "Aksam" wrote that the "historic" decision warned politicians against manipulating religion for political goals. Islamist-leaning "Zaman" and "Yeni Safak" wrote that the Court had usurped the powers of Parliament, and predicted that the decision would undermine the Court's credibility. Left-of-center "Taraf" wrote that there are now only two options for parliament: rewriting the Constitution or closing the Parliament.

Headscarf Ban Opponents Criticize AKP's Clumsiness

¶8. (C) Hidayet Tuksel, President of the Ankara Women's Platform, a pious women's rights group that has long advocated ending the headscarf ban, told us AKP bears fault for quashing any chance of tackling the headscarf issue in the next several years. Tuksel described her organization's tireless efforts lobbying AKP to approach the headscarf issue as part of a broad package of EU-related human rights reforms. She said AKP's insistence on pursuing the issue as the party's first agenda item following July 2007 parliamentary elections had made the issue political, created societal tension, and ensured the impossibility of resolving the issue in the near-term.

¶9. (C) Ayhan Bilgen, Secretary General of the Civil Society Development Center, agreed that AKP should have worked on the headscarf issue as part of a larger package of EU-related reforms. Bilgen believes even Turks opposed to lifting the headscarf ban would have been able to accept the change if it had been part of a larger progressive human rights reform process. Diyanet Women's Auxiliary Foundation President Ayse Tucul agreed that it will be impossible to address lifting the headscarf ban for the coming years. Tucul believes that current societal tension and political divide over the Ergenekon case and PKK terrorism have undercut the possibility of political cooperation that is needed to tackle difficult issues related to the Constitution.

New Academic Leadership Could Impact the Headscarf Issue

¶10. (U) Several University Rectors stated publicly that their institutions will abide by the verdict. Speaking to reporters, Akdeniz University Rector Israfil Kurtcebe said, "Nothing will change. Turkey is not a tribal society but a state of law. We will abide by the decision." Hacettepe University Rector Ugur Erdener said there would be "no change

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in attitude and practices." We are obliged to act meticulously as universities on the issue of protecting the basic values of the Republic." Mugla University Rector Sener Oktik said, "We have been exercising the rules of the Constitution and will continue to do so."

¶11. (C) Middle East Technical University (METU) Professor Aykan Erdemir told us AKP's efforts to appoint loyalists to key positions in the Higher Education Council (YOK) and at universities (ref B) could be an attempt to make an end-run around the Court's verdict. He explained that selection of academic officials flows from the leadership of YOK and University rectors. Erdemir told us that the composition of the leadership of Turkish universities was once part of the "secular establishment" but had "been lost" due to AKP's successful efforts to appoint its cadres.

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